

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRIAN EGGLESTON,

Petitioner,

v.

MARGARET GILBERT,

Respondent.

CASE NO. 3:16-CV-05159-RBL-DWC

ORDER GRANTING AGREED  
MOTION TO STAY

The District Court has referred this action to United States Magistrate Judge David W. Christel. On February 29, 2016, Petitioner Brian Eggleston filed a federal habeas Petition, pursuant to 28 U.S.C. § 2254, seeking relief from a state court conviction. Dkt. 1.<sup>1</sup> Presently before the Court is the parties' Agreed Motion to Stay Habeas Petition ("Motion"). Dkt. 10.

On March 18, 2016, the Court stayed the case until September 16, 2016, pending the resolution of Petitioner's state personal restraint petition ("PRP"). Dkt. 8. Petitioner was directed to file a report or move for the stay to be extended by September 2, 2016. *Id.* He did not notify the Court of a need to extend the stay and, on September 19, 2016, the stay was lifted. Dkt. 9. Respondent was directed to file an answer to the Amended Petition by November 3, 2016. On

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<sup>1</sup> On March 16, 2016, Petitioner filed an Amended Petition which raised a new, unexhausted ground for relief. Dkt. 6. The Amended Petition is the operative petition in this case.

1 November 2, 2016, the parties filed the Motion, requesting the Petition be stayed pending the  
2 resolution of Petitioner's PRP. Dkt. 10.

3 District courts may use a "stay-and-abeyance" procedure while a petitioner exhausts his  
4 claims in state court. *Rhines v. Weber*, 544 U.S. 269, 275-77; *Calderon v. United States District*  
5 *Court (Taylor)*, 134 F.3d 981, 988 (9th Cir.1998). Here, the parties contend a stay is proper  
6 because Petitioner's Amended Petition contains a new claim that has not been presented to the  
7 state court. Dkt. 10. Petitioner is attempting to exhaust the new claim through a PRP and the  
8 parties request the Amended Petition be stayed until the PRP is resolved. *Id.* Further, because the  
9 state court proceedings are "active," Respondent cannot obtain the state court file necessary to  
10 respond to the Petition. *Id.*

11 After reviewing the Motion, the Motion is granted. The case is stayed until Petitioner's  
12 PRP is resolved. Petitioner is ordered to file a status report regarding the status of his state  
13 proceedings by February 7, 2017. Petitioner's report shall include the state court cause number.  
14 Further, if the state court dismisses or resolves the PRP, Petitioner is ordered to inform the Court  
15 and file a motion to lift the stay within 30 days of the state court taking action.

16 Dated this 8th day of November, 2016.

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19 David W. Christel  
20 United States Magistrate Judge  
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